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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.205 OF 2006
IN
SUIT NO.1868 OF 1980

United Commercial Bank).. Plaintiff

Versus

Jyoti Automobiles and others).. Defendants

Nr.Parag Kale for the Plaintiff.

Mr.R.C. Shah i/b.Solomon & Co. for Defendant Nos.2(a) to 2(e).

CORAM : SMT. NISHITA MHATRE, J.

DATED : 20TH JULY 2006

P.C.:

. The present Chamber Summons has been taken out by the Plaintiff to allow it to lead secondary evidence. According to the Plaintiff, the original documents on which it relies in support of the claim in the Suit have been misplaced and, therefore, it is necessary to lead secondary evidence. Reliance is placed by the learned Advocate on Section 65(c) of the Evidence Act to point out that in such circumstances secondary evidence must be allowed by the Court. According to the learned Advocate for the Plaintiff, there is no denial in the Written Statement about these documents. He submits that under Order 8 Rule 3 of the Civil Procedure Code, the Defendants must specifically deny the statements

made in the Plaint. The learned Advocate submits that the denial is vague and, therefore, the Plaintiff ought to be permitted to lead secondary evidence.

2. On the other hand, the learned Counsel for Defendant No.2a submits that secondary evidence ought not to be allowed as the Defendants are not aware of those documents as Defendant No.2a is the legal heir of the original Defendant No.2. Therefore, submits the learned Counsel, it would be necessary for the Defendants to cross-examine the Plaintiff in order to ascertain how the documents were misplaced. The learned Counsel submits that since the Defendant No.2 is the legal heir of original Defendant No.2, he is not aware of any transaction between the Plaintiff and Defendant No.2. However, it is submitted that the only way to deny the contentions raised in the Plaint is to plead in the way the Defendants have in the Written Statement.

3. In my view, on a perusal of the affidavit in support of the Chamber Summons, I find that the Plaintiff has made out a case for leading secondary evidence . The submission of the learned Counsel for Defendant No.2a that it would be necessary to lead evidence before the Chamber Summons is allowed, is rejected.

4. Chamber Summons made absolute in terms of prayer clause (a).